



General Services Administration
Office of General Counsel
Washington, DC 20405

May 24, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Subject: Policy and Rules Concerning the Interstate, Interexchange
Marketplace; Implementation of Section 254(g) of the
Communications Act of 1934, as amended: CC Docket No. 96-61

Dear Mr. Caton:

Enclosed please find the original and eleven copies of the General Services Administration's Reply Comments for filing in the above-referenced proceeding. Copies of this filing have been served on all interested parties.

Sincerely,

Michael J. Ettner

Michael J. Ettner
Senior Assistant General Counsel
Personal Property Division

Enclosures

cc: International Transcription Service
Janice Myles (Diskette)

0213



**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)

Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)

Implementation of Section 245(g) of the)
Communications Act of 1934, as amended)

CC Docket No. 96-61

**REPLY COMMENTS OF THE
GENERAL SERVICES ADMINISTRATION**

EMILY C. HEWITT
General Counsel

VINCENT L. CRIVELLA
Associate General Counsel
Personal Property Division

MICHAEL J. ETTNER
Senior Assistant General Counsel
Personal Property Division

Economic Consultant:

**Snavelly King Majoros O'Connor
& Lee, Inc.**
1220 L Street, N.W.
Washington, D.C. 20005

GENERAL SERVICES ADMINISTRATION
18th & F Streets, N.W., Room 4002
Washington, D.C. 20405

May 24, 1996

Table of Contents

	<u>Page</u>
Summary	i
I. Introduction	1
II. Some Form Of Detariffing Is Necessary For The Integrity of Customer-Specific Contracts	2
III. Some Form Of Price Listing Continues To Be Necessary	3
IV. Permissive Tariffing For Mass Market Customers Is A Reasonable Alternative To Customer-Specific Contracts	4
V. The Commission Should Distance Itself From The Tariff Filing Process	5
VI. Conclusion	7

SUMMARY

Among the other large users of interstate services, GSA finds strong support for its view that tariffing, in its present form, is unacceptable because the "filed rate doctrine" allows carriers to abrogate the rates, terms and conditions of negotiated contract arrangements. Many of the carriers advocate "permissive tariffing" of services to mass market customers not subject to specific contracts. This alternative is acceptable to GSA provided that the Commission rules explicitly state that such tariffed rates no longer supersede customer-specific contract prices.

GSA also finds support for its recommendation that prices be posted electronically, as well as independently of the Commission, possibly using an independent administrator to ensure the consistency and accessibility of the posted prices.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)

Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)

Implementation of Section 245(g) of the)
Communications Act of 1934, as amended)

CC Docket No. 96-61

**REPLY COMMENTS OF THE
GENERAL SERVICES ADMINISTRATION**

The General Services Administration ("GSA"), on behalf of the customer interests of all of the Federal Executive Agencies, submits these Reply Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), FCC 96-123, released March 25, 1996.

I. Introduction

The Commission bifurcated the issues in its NPRM, requesting parties to submit separately their comments on the Commission's tentative proposal to require the mandatory detariffing of interstate services by all nondominant carriers. In response to this request, comments were submitted by

- GSA, the Secretary of Defense and 12 other representatives of users or user groups;
- 10 Local Exchange Carriers ("LECs"), and the United States Telephone Association;

- 16 Interexchange Carriers ("IXCs") and their associations;
- 14 providers of end use equipment or information services;
- 3 state regulatory agencies;
- the Telecommunications Resellers Association; and
- 3 other parties.

On reviewing these comments, GSA is encouraged to find considerable support for the positions it espoused in its Comments of April 25, 1996.

II. Some Form Of Detariffing Is Necessary For The Integrity of Customer-Specific Contracts.

Most of the business users' comments echoed the concern expressed by GSA that the present tariffing system is unacceptable because the "filed rate doctrine" allows carriers to undermine the integrity of customer-specific contracts. For example, the Ad Hoc Telecommunications Committee ("Ad Hoc") makes the following observation:

The most immediate benefit of de-tariffing for customers taking service under customer-specific arrangements is that they will be able to enforce the contracts they have negotiated with the carriers. Under the current regulatory regime, non-dominant carriers are effectively free to abrogate long-term contracts by filing changes to the applicable tariffs without specifically informing their customers, and on abbreviated or non-existent general public notice of any kind. The filed rate doctrine acts as a shield for such behavior...¹

¹ Comments of Ad Hoc, pp. 3,4 (footnotes omitted).

Ad Hoc then goes on to cite specific examples of abuse of the tariffing procedure by each of the major IXC's.

The American Petroleum Institute ("API") makes the same point in its comments:

...using the filed rate doctrine, carriers can knowingly and willfully misrepresent the rates, terms, and conditions of their services to induce customers to take services from them, and then file tariffs with the Commission that contain different rates, terms, and conditions to avoid having to provide their customers with the benefits of any bargains negotiated by them.²

API notes that the courts have supported the filed rate doctrine notwithstanding its "harsh and seemingly unfair results."³

Similar concerns with the filed rate doctrine are expressed by the Networks.⁴

III. Some Form Of Price Listing Continues To Be Necessary.

On the other hand, there is little support for the universal mandatory detariffing proposed in the NPRM. Even the three business user parties mentioned above focus their detariffing recommendations on customer-specific and business-related services. Ad Hoc recognizes that many existing contract arrangements reference the carrier's tariffed rates, and that some transition from tariffing will be necessary.⁵

² Comments of the American Petroleum Institute, pp. 6,7.

³ MCI Telecommunications Corp. v. TCI Mail, Inc., 772 F.Supp. 64, 67 (D.R.I. 1991), cited by API at p. 7.

⁴ Comments of Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Company, Inc., and Turner Broadcasting System, Inc., ("Networks"), p.4.

⁵ Comments of Ad Hoc, pp. 13, 14.

A number of parties agree with GSA that while advance notice tariffing is probably destructive to competition, access to current prices contributes to, rather than inhibits competition.⁶ There is also recognition that the Commission must have pricing information in order to protect consumers against unreasonable discrimination.⁷ Moreover, the Commission must have price information to implement the requirements of the Telecommunications Act of 1996 ("1996 Act") concerning rate averaging between urban and rural, high-cost and low-cost areas.⁸

IV. Permissive Tariffing For Mass Market Customers Is A Reasonable Alternative To Customer-Specific Contracts.

While there is no unanimity among all commentators, a large number -- possibly a majority -- of parties favor allowing nondominant carriers the option of tariffing mass market services for which individual contracting is infeasible. A number of the carriers assert that this practice is the most efficient procedure for establishing business relationships between a carrier and the bulk of its customers, particularly small customers. They also suggest that permissive tariffing is most consistent with the emerging competitive environment.⁹

⁶ Comments of The Office of the Ohio Consumer Counsel ("Ohio OCC"), p. 5; Comments of the Consumer Federation of America ("CFA"), pp. 2, 3.

⁷ Comments of CFA, p. 4.

⁸ Comments of the Pennsylvania Public Utility Commission ("Pennsylvania PUC"), p. 9.; Comments of the State of Alaska, pp. 2, 3.

⁹ Comments of Pacific Telesis Group, p. 5; Ameritech, p. 2,3; GTE, p.7; Frontier Corporation, p. 2; AT&T, p. 13; American Carriers Telecommunications Association ("ACTA"), pp. 10-15; Sprint, pp. 2-19; MCI, pp. 5-19.

GSA has no objection to permissive tariffing provided the rates tariffed do not take on the status of "filed rates" that supersede negotiated contract rates. AT&T argues that they would not. Specifically, AT&T suggests that because tariffs would no longer be required, a tariffed rate would no longer be the "only" lawful rate. MCI believes that if individually negotiated agreements were selectively detariffed,

...the carriers would be bound contractually to the fruits of their negotiations and could not use the tariffing process to renege on, or otherwise modify, their commitments to those who had relied upon carrier promises in entering into the contract in the first instance.¹⁰

According to these parties, permissive detariffing has the effect of raising contract rates to equal status with tariffed rates.¹¹

GSA supports this interpretation. However, GSA would be much more comfortable if it were incorporated explicitly into a Commission rule. Such a rule should state that tariffed rates apply only to services not otherwise covered by contract, and that contract rates are not superseded by tariffed rates.

V. The Commission Should Distance Itself From The Tariff Filing Process.

In its Initial Comments, GSA proposed that carriers not "file" rates with the Commission at all, but that carrier prices be posted on electronic bulletin boards

¹⁰ Comments of MCI, p.28.

¹¹ Comments of AT&T, p.21.

accessible to the Commission and to the public.¹²

Several other parties offer somewhat parallel suggestions. For example, ACTA strongly supports the continuation of tariffing, but it proposes that the Commission outsource the administration and management of tariffing to an independent clearinghouse, chosen by competitive bid. This clearinghouse would be supported by transaction fees from the carriers similar to the filing fees now paid the Commission.¹³

Separately, the Pennsylvania PUC proposes that the Commission consider a completely electronic tariff or price schedule filing system in which tariff charges could be inputted electronically and accessed through outside databases such as, for example, LEXIS/NEXIS. It cites the EDGAR program of the Security and Exchange Commission as an example of such an electronic filing format.¹⁴

The combination of these two proposals is close to GSA's initial recommendation. It had not been GSA's expectation that electronic filing would necessarily require a central clearinghouse function. Rather, there might be a central register where users, regulators and carriers can ascertain the electronic access addresses of the individual carriers' price lists. However, it may be desirable to retain an independent administrator, such as proposed by ACTA, to ensure that the electronic price/tariff information is available in a consistent and user-friendly format.

¹² Comments of GSA, pp. 11-16.

¹³ Comments of ACTA, p. 14.

¹⁴ Comments of the Pennsylvania PUC, p. 10.


VI. Conclusion

As the agency vested with the responsibility for acquiring telecommunications services on a competitive basis for the use of the Federal Executive Agencies, GSA urges the Commission to allow permissive tariffing or posting of prices for interstate telecommunications services, but only with the explicit proviso that the posted prices do not represent "filed rates" that supersede customer-specific contract arrangements. The Commission should also provide for the electronic posting of carrier prices, possibly using an independent administrator as proposed by ACTA.

Respectfully Submitted,

EMILY C. HEWITT
General Counsel

VINCENT L. CRIVELLA
Associate General Counsel
Personal Property Division


MICHAEL J. ETTNER
Senior Assistant General Counsel
Personal Property Division

GENERAL SERVICES ADMINISTRATION
18th & F Streets, N.W., Rm 4002
Washington, D.C. 20405
(202) 501-1156

May 24, 1996

CERTIFICATE OF SERVICE

I MICHAEL J. ETIHER, do hereby certify that copies of the foregoing "Reply Comments of the General Services Administration" were served this 24th day of May, 1996, by hand delivery or postage paid to the following parties:

Regina M. Keeney
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Janice Myles
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

International Transcription Service, Inc.
Suite 140
2100 M Street, N.W.
Washington, D.C. 20037

Paul Schwedler, Esquire
Asst. Regulatory Counsel, Telecommunications
Defense Info. Agency, Code AR
701 South Courthouse Road
Arlington, VA 22204-2199

Edith Herman
Senior Editor
Communications Daily
2115 Ward Court, N.W.
Washington, D.C. 20037

Telecommunications Reports
11th Floor, West Tower
1333 H Street, N.W.
Washington, D.C. 20005

**SERVICE LIST
(CONT'D)**

Richard B. Lee
Vice President
Snavelly King Majoros O'Connor
& Lee, Inc.
1220 L Street, N.W., Suite 410
Washington, D.C. 20005

Keith W. Watters
President
National Bar Association
1225 11th Street, N.W.
Washington, D.C. 20001-4217

Ellen G. Block
Levine, Blaszak, Block & Boothby
1300 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20036

Rodney L. Joyce
Attorney for Ad Hoc Coalition of
Corporate Telecommunications
Managers
Ginsburg, Feldman and Bress
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

Wayne V. Black
Attorney for The American Petroleum
Institute
Keller and Heckman
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001

Robert S. Tongren
The Office of the Ohio Consumers'
Counsel
77 South High Street, 15th Floor
Columbus, OH 43266-0550

Bradley Stillman
Counsel for Consumer Federation
of America
1424 16th Street, N.W., Suite 604
Washington, D.C. 20036

Bettye J. Gardner
President
The Association For The Study Of
Afro-American Life and History, Inc.
1407 Fourteenth Street, N.W.
Washington, D.C. 20005-3704

Winston R. Pittman
President
Chrysler Minority Dealer Association
27777 Franklin Road
Southfield, MI 48034

Wayne Leighton, Ph.D.
Citizens For A Sound Economy
Foundation
1250 H Street, N.W., Suite 700
Washington, D.C. 20005

Earl Pace
Founder & Chair, Legislative Committee
National Black Data Processors
Association
1250 Connecticut Avenue, N.W.
Suite 600
Washington, D.C. 20036

Aliceann Wohlbruck
National Association of Development
Organizations
444 North Capitol Street
Suite 630
Washington, D.C. 20001

**SERVICE LIST
(CONT'D)**

Paraquad
311 North Lindberg
St. Louis, MO 63141

United Homeowners Association
1511 K Street, N.W.
3rd Floor
Washington, D.C. 20005

National Hispanic Council On The Aging
2713 Ontario Road
Washington, D.C. 20009

Consumers First
P.O. Box 2346
Orinda, CA 94563

**National Association of Commissions
For Women**
1828 L Street, N.W.
Washington, D.C. 20036

John W. Katz, Esq.
Office of the State of Alaska
Suite 336
444 North Capitol Street, N.W.
Washington, D.C. 20001

The State of Alaska
Robert M. Halperin
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Alan Kohler
Counsel for Pennsylvania Public
Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Ann E. Henkener
Assistant Attorney General
Public Utilities Section
180 East Broad Street
Columbus, Ohio 43215-3793

Andrew D. Lipman
Attorney for MFS Communications
Company, Inc.
Swidler & Berlin, Chartered
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007

Dana Frix
Counsel for WinStar Communications,
Inc.
Swidler & Berlin, Chartered
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007

Timothy R. Graham
WinStar Communications, Inc.
1146 19th Street, N.W.
Washington, D.C. 20036

John W. Pettit
Counsel for the Consumer Electronics
Retailers Coalition
Drinker Biddle & Reath
901 Fifteenth Street, N.W.
Washington, D.C. 20005

Robert A. Mazer
Attorney for Compaq Computer
Corporation
Vinson & Elkins
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-1008

SERVICE LIST
(CONT'D)

Jeffrey A. Campbell
Federal Government Affairs
Compaq Computer Corporation
1300 I Street, N.W., Suite 490E
Washington, D.C. 20005

Joseph P. Markoski
Attorney for Information Technology
Association of America
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044

Herbert E. Marks
Counsel for the Independent Data
Communications Manufacturers
Association
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044

Jeffrey L. Sheldon
UTC
1140 Connecticut Avenue, N.W.
Suite 1140
Washington, D.C. 20036

Albert H. Kramer
Attorney for American Public
Communications Council
Dickstein, Shapiro & Morin, L.L.P.
2101 L Street, N.W.
Washington, D.C. 20037-1526

Allen P. Stayman
Director
United States Department of the Interior
Office of the Secretary
Washington, D.C. 20240

Thomas K. Crowe
Counsel for Excel Telecommunications,
Inc.
Law Offices of Thomas K. Crowe, P.C.
2300 M Street, N.W., Suite 800
Washington, D.C. 20037

Glenn S. Richards
Attorney for American Telegram
Corporation
Fisher Wayland Cooper Leader &
Zaragoza L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006

Cheryl Lynn Schneider
BT North America Inc.
601 Pennsylvania Avenue, N.W.
North Building, Suite 725
Washington, D.C. 20004

Mark P. Sievers
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Natalie Marine-Street
Telco Communications Group, Inc.
Long Distance Wholesale Club
4219 Lafayette Center Drive
Chantilly, VA 22021

Michael G. Hoffman, Esq.
Vartec Telecom, Inc.
3200 W. Pleasant Run Road
Lancaster, TX 75146

**SERVICE LIST
(CONT'D)**

Dana Frix
Attorney for Eastern Telephone
Systems, Inc.
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Helen E. Disenhaus
Attorney for URSUS Telecom Corp.
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Genevieve Morelli
Competitive Telecommunications
Association
1140 Connecticut Avenue, N.W.
Suite 220
Washington, D.C. 20036

Robert J. Aamoth
Counsel for Competitive
Telecommunications Association
Reed Smith Shaw & McClay
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005

Charles H. Helein
Helein & Associates, P.C.
8180 Greensboro Drive, Suite 700
McLean, VA 22102

Charles C. Hunter
Attorney for Telecommunications
Resellers Association
Hunter & Mow, P.C.
1620 I Street, N.W., Suite 701
Washington, D.C. 20006

Leon M. Kestenbaum
Sprint Corporation
1850 M Street, N.W.
11th Floor
Washington, D.C. 20036

Donald J. Elardo
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Catherine R. Sloan
WorldCom, Inc.
d/b/a LDDS WorldCom
1120 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036

Lee M. Weiner
LCI International Telecom Corp.
8180 Greensboro Drive
Suite 800
McLean, VA 22102

Robert J. Aamoth
Counsel for LCI International Telecom
Corp.
Reed Smith Shaw & McClay
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005

Kathy L. Shobert
General Communication, Inc.
901 15th Street, N.W., Suite 900
Washington, D.C. 20005

SERVICE LIST
(CONT'D)

Mark C. Rosenblum
AT&T Corp.
Room 3244J1
295 North Maple Avenue
Basking Ridge, NJ 07920

David W. Carpenter
One First National Plaza
Chicago, IL 60603

Ann P. Morton
Cable & Wireless, Inc.
8219 Leesburg Pike
Vienna, VA 22182

Danny E. Adams
Attorney for Cable & Wireless, Inc.
Kelley Drye & Warren
1200 19th Street, N.W.
Washington, D.C. 20036

Cheryl A. Tritt
Counsel for Telecommunications
Management Information Systems
Coalition
Morrison & Foerster, L.L.P.
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, D.C. 20006

William B. Goddard
President
Telecommunications Information Services
4613 West Chester Pike
Newton Square, PA 19073

Samuel A. Simon
Counsel
Telecommunications Research and
Action Center
901 15th Street, N.W., Suite 230
Washington, D.C. 20005

John Abernathy
Network Analysis Center, Inc.
45 Executive Drive, Suite GL 3
Plainview, NY 11803

Robert L. Boxer
Corporate Counsel
Moscow Corporation
3750 Monroe Avenue
Pittsford, NY 14534

Stuart Zimmerman
Fone Saver, LLC
733 Summer Street, Suite 306
Stamford, CT 06901-1019

Dr. Robert Self
dba Market Dynamics
4641 Montgomery Avenue - #515
Bethesda, MD 20814-3488

S. Joseph Dorr
American Computer
Headquarters
209 Perry Parkway
Gaithersburg, MD 20877

Michael Greenspan
MBG
370 Lexington Avenue
New York, NY 10017

**SERVICE LIST
(CONT'D)**

**Eileen Seidowitz
Audits Unlimited, Inc.
139-15 83rd Avenue
Briarwood, NY 11435**

**William H. Welling
XIOX Corporation
577 Airport Boulevard
Suite 700
Burlingame, CA 94010**

**Mary McDermott
United States Telephone Association
1401 H Street, N.W., Suite 600
Washington, D.C. 20005**

**James D. Ellis
Attorney for SBC Communications Inc.
175 E. Houston
Room 1254
San Antonio, TX 78205**

**Marlin D. Ard
140 New Montgomery Street
Room 1530A
San Francisco, CA 94105**

**Margaret E. Garber
Attorney for Pacific Telesis Group
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

**Campbell L. Ayling
Attorney for The NYNEX
Telephone Companies
1111 Westchester Avenue
White Plains, NY 10604**

**Gail L. Polivy
Attorney of GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036**

**Michael J. Shortley, III
Attorney for Frontier Corporation
180 South Clinton Avenue
Rochester, NY 14646**

**Edward Shakin
Attorney for Bell Atlantic Telephone
Companies
1320 North Courthouse Road
Eighth Floor
Arlington, VA 22201**

**Gary L. Phillips
Counsel for Ameritech
1401 H Street, N.W., Suite 1020
Washington, D.C. 20005**

**Bruce D. Jacobs
Attorney for AMSC Subsidiary
Corporation
Fisher Wayland Cooper Leader &
Zaragoza L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006**

**Lon C. Levin
AMSC Subsidiary Corporation
10802 Park Ridge Boulevard
Reston, VA 22091**

SERVICE LIST
(CONT'D)

John F. Beasley
Attorney for BellSouth (Phase II)
1155 Peachtree Street, N.E.
Suite 1800
Atlanta, GA 30309-2641

Charles P. Featherstun
Attorney for BellSouth (Phase II)
1133 21st Street, N.W.
Washington, D.C. 20036

Michael J. Etteme
